

LAW OFFICES

SMITHWICK & BELENDIUK, P.C.

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

RECEIVED

FEB 10 2003

Federal Communications Commission
Office of secretary

GARY S. SMITHWICK
ARTHUR V. BELENDIUK

DIRECT DIAL NUMBER:
E-MAIL ADDRESS:

(202)363-4559
abelendiuk@fccworld.com

COUNSEL

WILLIAM M. BARNARD
JAMES K. EDMUNDSON
ELLEN MANDELL EDMUNDSON

February 10, 2003

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
Portals II, Filing Counter TW-A325
445 12th Street, N.W.
Washington, D.C. 20554

**Re: Docket No. MB 02-235
Transfer of Control of Broadcast Stations Licensed to
Hispanic Broadcasting Corporation
File Nos. BTC, BRCFTB, BTCH-20020723 ABL-ADR
And BTCH-20021125-ABD-ABH**

Dear Ms. Dortch:

The National Hispanic Policy Institute, Inc. ("NHPI"), by its counsel, herby responds to the letter written on February 3, 2003 on behalf of Hispanic Broadcasting Corporation ("HBC").

The purpose of HBC's letter is to notify the Commission that a Complaint filed by Spanish Broadcasting System, Inc. ("SBS") against HBC and Clear Channel Communications, Inc. in the United States District Court for the Southern District of Florida alleging that HBC and Clear Channel had engaged in anti-competitive actions in violation of the Sherman Act and various state statutes was dismissed.

In its Petition to Deny, filed September 3, 2002, NHPI submitted, as an exhibit, a copy of the Complaint in the above reference lawsuit. The purpose for submitting a copy of the Complaint was not to demonstrate anti-competitive behavior, but to show that Clear Channel was actively involved in the management and day-to-day operations of HBC. As NHPI stated in the Petition to Deny "Clear Channel's participation in the affairs of HBC demonstrates a pattern of conduct in which Clear Channel conceals, through numerous material misrepresentations to the FCC, the actual ownership and control of certain radio station groups, including HBC."

No. of Copies (only)
List ABCDE

2

Marlene H. Dortch
February 10, 2003
Page 2

In dismissing SBS's Complaint, the District Judge did not make specific findings of fact. Rather the judge concluded that if all the allegations made in the Complaint were proven, **SBS** could not show that there had been a violation of the Sherman Act.

NHPI submitted the Complaint to show that Clear Channel had not been candid with the FCC concerning its claim that its interest in HBC was passive and therefore not attributable. The facts alleged in the Complaint, if proven, would show that Clear Channel has exercised significant influence over the operations of HBC. Now that the District Court has dismissed the **SBS** Complaint, the Commission should carefully examine the allegations made therein to determine whether Clear Channel, despite its representations to the contrary, holds an attributable interest in HBC.

In determining whether an interest is attributable, the Commission seeks to determine whether the rights or relationships it confers will allow the holder to influence the operations of the license such that it should be subject to the multiple ownership rules.¹ Clear Channel has repeatedly represented to the Commission that it does not exercise significant influence over the operations *or* financing of HBC. However, it has repeatedly told the Securities and Exchange Commission just the opposite.

Attached hereto are the pertinent portions of Clear Channel's most recent SEC Form 10-K, for the fiscal year ended December 31, 2001. Clear Channel in its SEC Form 10-K uses the **equity method** to account for its interest in HBC. Clear Channel in its SEC Form 10-K correctly states the generally accepted accounting principle ("GAAP") "Investments in which the Company owns 20 percent to 50 percent of the voting common stock **or** otherwise exercises significant influence over operating and financial policies of the company are accounted for under the equity method."

Clear Channel owns nonvoting stock in HBC. Applying GAAP, Clear Channel's interest in HBC should have been accounted for on a cost basis. However, Clear Channel's independent auditors, Ernst & Young LLP, concluded that Clear Channel does exercise significant influence over the operating and financial policies of HBC. Such a determination is fully in accord with the Accounting Principles Board, APB Opinion No. 18, *The Equity Method for Accounting of Investments in Common Stock*.

Ability to exercise that influence may be indicated in several ways, such as representation on the board of

¹ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12581 (1999).

Marlene H. Dortch

February 10, 2003

Page 3

directors, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, or technological dependency.

As Clear Channel does not own voting stock in HBC, the presumption is that Clear Channel does not have the ability to exercise significant influence over the operating and financial policies of HBC. Yet in the course of its audit Ernst & Young must have acquired information that led it to conclude that Clear Channel, in fact, could exercise significant influence over HBC. What information does Ernst & Young have that Clear Channel has not shared with the FCC?

Clearly, HBC is not technologically dependent on Clear Channel. The equipment necessary to operate a radio station can be purchased from any number of vendors. Nor is it likely that there would be any significant inter-company transactions. Clear Channel does not produce anything that HBC requires to operate its radio stations. This leaves Clear Channel's participation in the policymaking process, the interchange of management personnel, and its alleged continued representation on HBC's board of directors.

The Petition to Deny provided several examples where the principals of Clear Channel participated in the management and operations of HBC. Clear Channel, though it now claims it made a "mistake," filed numerous forms with the FCC which unequivocally and under penalty of perjury stated that Clear Channel's employees were stationed in all of HBC's radio stations. The SBS Complaint indicates that despite representations to the contrary, Clear Channel still has the power to appoint two members to the HBC board of directors. If true, this is the type of significant influence that would have lead Ernst & Young to conclude that Clear Channel's interest in HBC must be accounted under the equity method.

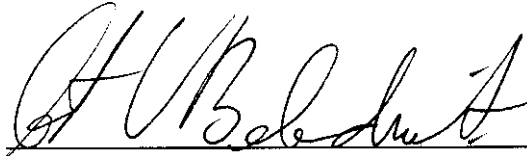
Clear Channel has not been forthcoming or candid in explaining its relationship with HBC. On the one hand it tells the FCC that it has no power to significantly influence the affairs of HBC and therefore its ownership interest in HBC is non-attributable. On the other hand, it reports to the SEC that despite the fact that it holds nonvoting stock, it is capable of exerting significant influence over the operating and financial policies of HBC. Clear Channel cannot have its cake and eat it too. An independent auditor has reviewed the relationship between Clear Channel and HBC and has concluded that Clear Channel does have the power to significantly influence the operations of HBC. Barring an opportunity for full discovery in an evidentiary hearing, such a determination must be conclusive.

SMITHWICK & BELENDIUK, P.C.

Marlene H. Dortch
February 10, 2003
Page 4

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'A. Belendiuk', written over a horizontal line.

Arthur V. Belendiuk

Counsel to National Hispanic Policy
Institute, Inc.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abemathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Lawrence N. Cohen, Esquire
(Counsel for The Shareholders of Hispanic Broadcasting Corp.)
Lauren Lynch Flick, Esquire (Counsel for Univision Communications, Inc.)
David Brown, Esquire (Media Bureau, FCC)
Barbara Kreisman, Esquire (Video Division, Media Bureau, FCC)
Harry F. Cole, Esquire (Counsel to Elgin FM Limited Partnership)

<DOCUMENT>
 <TYPE>10-K
 <SEQUENCE>1
 <FILENAME>d94835e10-k.txt
 <DESCRIPTION>FORM 10-K FOR FISCAL YEAR END DECEMBER 31, 2001
 <TEXT>
 <PAGE>

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, DC 20549

FORM 10-K

☒ Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the fiscal year ended December 31, 2001, or

☐ Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the transition period from _____ to _____

COMMISSION FILE NUMBER
 1-9645

CLEAR CHANNEL COMMUNICATIONS, INC.
 (Exact name of registrant as specified in its charter)

Texas 74-1787539
 (State of Incorporation) (I.R.S. Employer Identification No.)

200 East Basse Road
 San Antonio, Texas 78209
 Telephone (210) 822-2828

(Address, including zip code, and
 telephone number, including area code, of
 registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:
 Common Stock, \$.10 par value per share.

Securities registered pursuant to Section 12(g) of the Act: None.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

--- --

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

--

On March 8, 2002. the aggregate market value of the Common Stock beneficially held by non-affiliates of the Company was approximately \$28.3 billion. (For purposes hereof, directors, executive officers and 10% or greater shareholders have been deemed affiliates).

Intangible assets are stated at cost. Excess cost over the fair value of net assets acquired is classified as goodwill. Intangible assets and goodwill acquired prior to June 30, 2001 are amortized using the straight-line method. Intangible assets acquired subsequent to June 30, 2001, that are classified as indefinite-lived intangibles (principally broadcast FCC licenses) and goodwill are not being amortized and are evaluated for impairment under the appropriate accounting guidance. Goodwill and licenses acquired prior to June 30, 2001 are amortized generally over 15 to 25 years. Transit and street furniture contract intangibles are classified as definite-lived intangibles and are amortized over the respective lives of the agreements, typically four to fifteen years. Other definite-lived intangible assets are amortized over their appropriate lives.

LONG-LIVED ASSETS

The Company periodically evaluates the propriety of the carrying amount of goodwill and other intangible assets and related amortization periods to determine whether current events or circumstances warrant adjustments to the carrying value and/or revised estimates of amortization periods. These evaluations consist of the projection of undiscounted cash flows over the remaining amortization periods of the related intangible assets. The projections are based on historical trend lines of actual results, adjusted for expected changes in operating results. To the extent such projections indicate that undiscounted cash flows are not expected to be adequate to recover the carrying amount of the related intangible assets, such carrying amounts are written down to fair value by charges to expense. During 2001, the Company recorded impairment charges of approximately \$170.0 million related to the write off of duplicative and excess assets identified primarily in the radio segment, the impairment of goodwill and excess property, plant and equipment in Poland within the outdoor segment, and an on-air talent contract within the radio segment. The fair values of the goodwill in Poland and the on-air talent contract were determined based on discounted cash flow models and assumptions of future expected cash flows and the fair values related to property, plant, and equipment were based on estimated cash proceeds. These impairment charges were recorded in depreciation and amortization expense in the statement of operations.

71

<PAGE>

OTHER INVESTMENTS

Other investments are composed primarily of equity securities. These securities are classified as available-for-sale or trading and are carried at fair value based on quoted market prices. Securities are carried at historical value when quoted market prices are unavailable. The net unrealized gains or losses on the available-for-sale securities, net of tax, are reported as a separate component of shareholders' equity. The net unrealized gains or losses on the trading securities are reported in the statement of operations. In addition, the Company holds investments that do not have quoted market prices. The Company reviews the value of available-for-sale, trading and non-marketable securities and records impairment charges in the statement of operations for any decline in value that is determined to be other-than-temporary. The average cost method is used to compute the realized gains and losses on sales of equity securities.

EQUITY METHOD INVESTMENTS

Investments in which the Company owns 20 percent to 50 percent of the voting common stock or otherwise exercises significant influence over operating and financial policies of the company are accounted for under the equity method. The Company does not recognize gains or losses upon the issuance of securities by any of its equity method investees. The Company reviews the value of equity method investments and records impairment charges in the statement of operations for any decline in value that is determined to be other-than-temporary.

a liability in purchase accounting primarily related to severance for terminated employees and lease terminations as follows:

<TABLE>

<CAPTION>

(In thousands)

	December 31,	
	2001	2000
	----	----
<S>	<C>	<C>
Severance and lease termination costs:		
Accrual at January 1	\$ 84,291	\$ 4,348
Adjustments to restructuring accrual	41,624	120,797
Payments charged against restructuring accrual	(72,733)	(40,854)
Remaining severance and lease termination accrual	\$ 53,182	\$ 84,291
	=====	=====

</TABLE>

79

<PAGE>

The remaining severance and lease accrual is comprised of \$42.8 million of severance and \$10.4 million of lease termination. The majority of the severance accrual will be paid in 2002; however, the severance accrual also includes an amount that will be paid over the next several years. The lease termination accrual will be paid over the next five years. During 2001, \$68.7 million was paid and charged to the restructuring reserve related to severance. The adjustments to the restructuring accrual presented above, which are primarily related to additional severance and compensation accruals were recorded within goodwill. During 2001, the Company made adjustments to finalize the purchase price allocation for both the AMFM and SFX mergers.

NOTE C - INVESTMENTS

The Company's most significant investments in non-consolidated affiliates are listed below:

AUSTRALIAN RADIO NETWORK

The Company owns a fifty-percent (50%) interest in Australian Radio Network ("ARN"), an Australian company that owns and operates radio stations, a narrowcast radio broadcast service and a radio representation company in Australia.

81 HISPANIC BROADCASTING CORPORATION

The Company owns 26% of the total number of shares of Hispanic Broadcasting Corporation ("HBC"), a leading domestic Spanish-language radio broadcaster. At December 31, 2001, the fair market value of the Company's shares of HBC was \$722.0 million.

GRUPO ACIR COMUNICACIONES

The Company owns a forty-percent (40%) interest in Grupo ACIR Comunicaciones ("ACIR"), a Mexican radio broadcasting company. ACIR owns and operates radio stations throughout Mexico.

CLEAR MEDIA

The Company owns 46.1% of the total number of shares of Hainan White Horse Advertising Media Investment Co. Ltd. ("Clear Media"), formerly known as White Horse, a Chinese company that operates street furniture displays throughout China. At December 31, 2001, the fair market value of the Company's shares of Clear Media was \$169.1 million.

80

<PAGE>

SUMMARIZED FINANCIAL INFORMATION

The following table summarizes the Company's investments in these nonconsolidated affiliates:

<TABLE>

<CAPTION>

(In thousands)

	ARN	HBC	ACIR	Cle Med
	---	---	---	---
<S>	<C>	<C>	<C>	<C>
At December 31, 2000	\$57,806	\$157,629	\$55,443	\$43,
Acquisition of new investments	--	--	--	
Transfers from cost investments and other reclasses	--	--	--	
Additional investment, net	3,076	--	--	11,
Equity in net earnings	(557)	8,038	(2,584)	1,
Amortization of excess cost	--	(605)	(1,896)	
Foreign currency transaction adjustment	674	--	--	
Foreign currency translation adjustment	2,365	--	313	(
	-----	-----	-----	-----
At December 31, 2001	\$63,364	\$165,062	\$51,276	\$56,
	=====	=====	=====	=====

</TABLE>

X | The above investments are not consolidated, but are accounted for under the equity method of accounting, whereby the Company records its investments in these entities in the balance sheet as "Investments in, and advances to, nonconsolidated affiliates." The Company's interests in their operations are recorded in the statement of operations as "Equity in earnings of nonconsolidated affiliates." Other income derived from transactions with nonconsolidated affiliates consists of interest, management fees and other transaction gains, which aggregated \$3.7 million in 2001, \$4.3 million in 2000, and \$7.4 million in 1999. and are recorded in the statement of operations as "Equity in earnings of nonconsolidated affiliates." Accumulated undistributed earnings included in retained earnings for these investments was \$45.1 million, \$39.0 million and \$18.2 million for December 31, 2001, 2000 and 1999, respectively.

OTHER INVESTMENTS

Other investments of \$354.3 million and \$1.6 billion at December 31, 2001 and 2000, respectively, include marketable equity securities classified as follows:

<TABLE>

<CAPTION>

(In thousands)